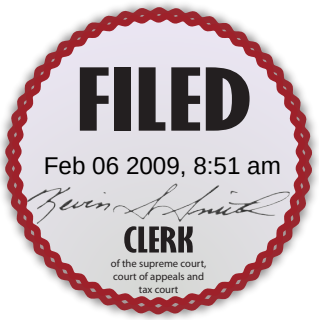

ATTORNEY FOR APPELLANT:

LAURA M. TAYLOR
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

TIFFANY N. ROMINE
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CHARLES DECKER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0807-CR-611
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
The Honorable Jeffrey Marchal, Commissioner
Cause No. 49G06-0707-FC-154412

February 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Charles Decker appeals his conviction, after a bench trial, of one count of child molesting, as a class C felony.

We affirm.

ISSUE

Whether sufficient evidence sustains the conviction.

FACTS

D.D., born July 16, 1993, is the son of Melissa Eads and Decker. Eads and Decker lived together for 18-19 years, separating in January of 2006. Thereafter, Eads was awarded custody of D.D. D.D. and Decker had a good father-son relationship, and consistent with the court's visitation order, D.D. spent every other weekend with Decker. In early December of 2006, thirteen-year-old D.D. went to Decker's residence, and they spent the evening watching television and playing a game. As usual, D.D. went to bed alone, in Decker's bedroom, and Decker stayed "in the front room." (Tr. 18). After D.D. had been asleep for a while, he heard his father's voice in the bedroom, and then "[h]e touched [D.D.]" (Tr. 19). Decker's initial touching of "[D.D.]s weiner," the body part that he uses "to pee," was outside D.D.'s underwear, but Decker next "went underneath" the underwear -- with Decker's hand "moving," "like kind of rubbing." (Tr. 20, 21).

D.D. did not tell anyone about the incident because he was "scared." (Tr. 23). On June 11, 2007, D.D. was visiting his cousin Jennifer Feltner. D.D.'s demeanor led Feltner to press him about what was troubling him, and he told her that Decker had molested him. Feltner told Eads, and Eads contacted the police.

On August 1, 2007, the State charged Decker with one count of child molesting, as a class C felony. It alleged that in December of 2006, Decker had performed or submitted to fondling or touching with D.D., a child under the age of fourteen, "with the intent to arouse or satisfy the sexual desires of" Decker. (App. 15).

On April 1, 2007, Decker waived his right to a jury trial, and a bench trial was held. D.D. testified as indicated above. D.D. also testified that after that December weekend, he had not gone back to visit Decker. Eads testified that during 2006, D.D. had always enjoyed visiting his father on alternate weekends, but that after December of 2006, he refused to go. According to Eads, D.D. "would cry and throw a fit," begging her to not "make [him] go," and D.D. never spent the night with Decker after December of 2006. (Tr. 54).

The trial court noted that it had "observe[d]" D.D. and "listen[ed] very carefully to his testimony," and found "his testimony to be credible." (Tr. 95). The trial court expressly found no "reason why he would fabricate" his claim, and "no evidence to support" Decker's "implication" that D.D.'s mother had "coached or rehearsed" his testimony. *Id.* It then found Decker guilty as charged.

DECISION

Decker argues that there is "insufficient evidence to prove" that he committed the crime of child molesting as charged "because [D.D.'s] testimony is incredibly dubious." Decker's Br. at 3. We cannot agree.

In reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict, and we do not weigh the

evidence or assess witness credibility. *Devries v. State*, 833 N.E.2d 511, 513 (Ind. 2005), *trans. denied*. We will affirm if, applying that perspective, a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.*

The "incredible dubiosity" doctrine applies "where a sole witness presents inherently contradictory testimony that is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt." *Id.* (quoting *Thompson v. State*, 765 N.E.2d 1273, 1274 (Ind. 2002)). Application of the doctrine "is rare, and the standard to be applied is whether the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Id.* (quoting *Krumm v. State*, 793 N.E.2d 1170, 1177 (Ind. Ct. App. 2003)).

Decker reminds us that D.D. testified that the lights were off on that night during the touching, but the officer testified that D.D. told him the lights had been on. However, there was no argument to the trial court that someone other than Decker had been in Decker's bedroom when D.D. was awakened that night, or that D.D. would not have recognized Decker's voice when it woke him. We do not find this discrepancy to render D.D.'s testimony "incredibly dubious or inherently improbable." *Id.*

Decker further asserts that D.D. was unclear about whether he first told Feltner or his mother. At trial, D.D. repeatedly testified that he first told Feltner. During cross-examination, Decker's counsel asserted that D.D. had stated in his deposition that he had first told his mother; and D.D. testified that if he had so answered at the deposition, he "didn't understand the question" because he "kn[e]w [he] told [his] cousin first." (Tr. 86).

Finally, Decker argues that he and Eads "fought a great deal and waged a custody battle over him," and that because D.D. "lived with Eads," that gave her "ample motivation and opportunity to coerce her young son to make up a story about Decker." Decker's Br. at 5. We find the record to contain no evidence that Decker and Eads fought a great deal. When Decker's counsel asked Eads whether she and Decker "had a custody battle over" D.D., she answered, "Yes." (Tr. 58). Decker's argument essentially asks that from this single word we leap to the conclusion that D.D.'s testimony was not truthful. This is nothing more than a request for us to reweigh the evidence, which we do not do.

We have held that a victim's testimony, "even if uncorroborated," is ordinarily sufficient to sustain a conviction for child molesting. *Sargent v. State*, 875 N.E.2d 762, 767 (Ind. Ct. App. 2007) (citing *Craun v. State*, 762 N.E.2d 230, 239 (Ind. Ct. App. 2002), *trans. denied*). Here, the record reflects neither the lack of corroboration nor the "complete lack of circumstantial evidence" component of the incredible dubiosity doctrine. *Devries*, 833 N.E.2d at 513 (quoting *Thompson*, 765 N.E.2d at 1274). D.D. testified that after that night in December, he had not gone back to visit Decker, which was corroborated by Eads who testified that after D.D.'s visitation with Decker in December, D.D. had refused to visit Decker – even when she explained to him that the visitation was court-ordered.

D.D.'s testimony was clear and unequivocal. Thirteen-year-old D.D. had happily maintained regular visits with Decker, his father whom he loved. The evidence revealed that Decker touched D.D.'s penis, and moved his hand in a rubbing motion which D.D.

demonstrated to the trial court. This evidence supports the reasonable inference that Decker touched D.D.'s penis with the intent to arouse or satisfy his own sexual desires.

Affirmed.

RILEY, J., and VAIDIK, J., concur.